

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, September 10, 2003, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Mary Voelker
Walter Tarmann
Darryl Judson

BOARD MEMBERS ABSENT: Paul Schultz

SECRETARY TO THE BOARD: Amy A. Barrows

OTHERS PRESENT: Town of Merton Board of Adjustment
Jenefer VanAssche, petitioner, BA03:082
Marilyn & Leroy Zimdars, petitioners, BA03:022
Mike Dvorak, petitioner, BA03:080
Dan & Kim Burkwald, petitioners, BA03:081
John Baumann, petitioner, BA01:059
Joseph and Marie Armeli, owner, BA03:080

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I move we approve the Summary of the Meeting of August 13, 2003.*

The motion was seconded by Ms. Voelker and carried unanimously.

NEW BUSINESS:

BA03:022 LEROY ZIMDARS (Held in Abeyance from April 9, 2003.)

Ms. Voelker *I move we grant the petitioner's request to hold the hearing in abeyance until November 12, 2003.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

BA03:078 JAMES JULIN

Ms. Voelker

I move we hold the hearing in abeyance until September 24, 2003. I request the staff notify the petitioner of the “staff recommendation” for denial and the adjourned hearing date.

The motion was seconded by Mr. Judson and carried unanimously.

The staff’s recommendation was for denial for the following reasons:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. It is the intent of the Ordinance that non-conforming structures should be eliminated over time and allowing a significantly non-conforming residence to be raised, improved, and further maintained in its same non-conforming location would only serve to perpetuate the existence of the non-conforming principal building. There is a sizeable conforming location for re-locating the existing residence or constructing a new residence, which would conform to all Ordinance requirements. Therefore, it would not be within the purpose and intent of the Ordinance to grant the requested variances.

BA03:080 MICHAEL DVORAK (Joseph Armeli – Owner)

Ms. Voelker

I make a motion to adopt the staff’s recommendation for denial, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried with 4 yes votes. Jim Ward voted against the motion.

The staff’s recommendation was for denial for the following reasons:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship, that the property has unique physical conditions which prevent compliance, and that granting the requested variance would not be contrary to the public interest. A hardship has been defined by the Wisconsin Supreme Court as a situation where, in the absence of a variance, no reasonable use can be made of the property. The petitioner currently has reasonable use of the property with a 2,895 sq. ft. single-family residence, a 1,080 sq. ft. attached garage, a 954 sq. ft. detached garage, a 369 sq. ft. detached garage, and a 100 sq. ft. shed. The existing detached garage is located extremely close to the south lot line, limiting passage and maintenance along the south side of the structure, as well as limiting open space only a few feet from an adjacent property. Allowing the existing detached garage to be significantly enlarged in an extremely non-conforming location is simply perpetuating the existence of non-conforming structures, when the purpose and intent of the Ordinance is to eliminate non-conformity on a property to the greatest extent possible. A special exception approval for an addition to the extremely non-conforming garage would not be compatible with the adjacent property to the south as it relates to size and closeness. The detached garage on the adjacent property maintains a significantly greater setback to the common lot line than

the detached garage on the subject property and is not nearly as large as the detached garage,

including the proposed addition. The property is large and several alternatives exist, which would allow the petitioner to conform to all Ordinance requirements. Therefore, the petitioner's proposal is not within the spirit and intent of the Ordinance.

BA03:082 COCHRAN SIGN CO. (Oconomowoc Investment & Building Corp. – Owner)

Mr. Bartholomew

I make a motion to adopt the staff's recommendation for approval, with the same conditions as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Judson and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Prior to the issuance of a Zoning Permit, the Waukesha County Highway Department must approve or issue any permits needed for the proposed sign replacement.
2. Prior to the issuance of a Zoning Permit for the proposed sign replacement, the Waukesha County Park and Planning Commission shall approve the Site Plan and Plan of Operation and all conditions of approval shall be met and the Planning and Zoning Division Staff must issue a Plan of Operation Permit.
3. The sign, including the existing portions of the sign, shall not exceed 12 ft. 6 in. x 8 ft. 2 in., approximately 101 sq. ft., in total size.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

If approved as conditioned, it is felt that the petitioner can replace the original sign previously approved by the Board of Adjustment in 1994 and 2001 with a new illuminated sign slightly larger than originally approved without detriment to safety or site hazards along a major arterial highway. The petitioner is not proposing any additional signs than what currently exists on the property. Therefore, the approval of this request, as recommended, is in conformance with the purpose and intent of the Ordinance.

BA03:081 KARL HOLTERMANN, BARTELT-FILO DESIGN BUILD (Daniel & Kim Burkwald – Owners)

Ms. Voelker

I make a motion to adopt the staff's recommendation for approval, with the same conditions as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. All additions, including the deck and any other appurtenances such as the stairway, must be located at least 75 ft. from the Ordinary high water mark of North Lake, 40 ft. from the 100-

year floodplain and must be located at least 17.17 ft. from the north and south lot lines, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the side lot lines, the lake, and 100-year floodplain as the overhangs exceed two (2) ft. in width. The floor area ratio must not exceed 15%.

2. The natural grade of the closest point of proposed additions and decking to the 100-year floodplain and decking must be at least 3 ft. above the 100-year floodplain elevation.
3. The 68 sq. ft. non-conforming shed must be removed, prior to the expiration date of the permit to be issued for the additions and decking.
4. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
5. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed additions and deck, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. If any changes to the existing grade are proposed, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed additions and deck does not result in adverse drainage onto adjacent properties or the road. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan, including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested variances, with the recommended conditions, allows the petitioner reasonable use of the property, while maintaining the spirit and intent of the Ordinance. The additions, as proposed, will not negatively impact the natural resources in the area or the surrounding properties. The proposal and existing structure minimally exceed the Ordinance requirements. The existing residence is non-conforming due to being a minimal few feet too close to the side lot line and, since our Department does not feel that the additions would negatively impact the natural resources or surrounding area, due to the construction being greater than the required shore setback

and more than 3 ft. above the 100-year floodplain elevation, the proposals would be in conformance with the spirit and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA03:046 WILLIAM REICH & LORA HOVLAND-REICH

Discussion occurred regarding language stated in the Decision Sheet from the hearing of September 12, 2003. No motions were made. No changes to the Decision Sheet from the hearing date of September 12, 2003, were made.

BA01:059 CURTIS BEELER & JOHN BAUMANN

Ms. Voelker

I make a motion to approve the petitioner's request to extend the deadline in Condition No. 3, to obtain a Zoning Permit for a single-family residence until September 10, 2004, since the petitioner just recently received County Board approval for a Land Use Plan Amendment and still needs Certified Survey Map approval from the Town and County, prior to applying for a Zoning Permit.

The motion was seconded by Mr. Tarmann and carried unanimously.

DISCUSSION OF VARIANCE DECISION SHEET

The Board discussed using the "Variance Decision Sheet" drafted by Attorney Robyn Schuchardt, Assistant Corporation Counsel. The Board suggested the staff have the "Variance Decision Sheet" available at the meetings and if necessary the Board can refer to it for decision making and articulating their motion. The Board suggested the sheet be used on an informal basis for the time being.

ADJOURNMENT:

Ms. Voelker

I move we adjourn this meeting at 8:25 p.m.

The motion was seconded by Mr. Judson and carried unanimously.

Respectfully submitted,

Amy A. Barrows
Secretary, Board of Adjustment